IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 23 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

ARUN MILLS LIMITED

Appearance:

MR BB NAYAK FOR MR MANISH R BHATT for Applicant.

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE D.A.MEHTA

Date of decision: 05/12/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

1 The Income Tax Appellate Tribunal, Ahmedabad Bench 'A' has referred the following questions under section 256(1) of the Income Tax Act,1961 (hereinafter referred to as 'the Act') :

1 "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in holding that while considering the disallowance u/s.40(c), the medical benefits and house rent allowance paid to the managing directors is not to be considered ?"

2 "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in holding that cash payment of house rent allowance and special duty allowance to the officers of the company is not to be considered for the purpose of disallowance u/s.40-A(5) of the Act ?"

3 "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in holding that deduction u/s.80VV should be allowed on the total income computed for the purpose of sec.80VVA irrespective of the fact that the total income computed without applying the provisions of Sec.80VVA is nil?"

4 "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that while disallowing travelling expenses under the rule 6D of the I.T.Rules, all the tours undertaken by a person during the year should first be grouped and then limits laid down in rule 6D should be applied ?"

2 Mr.B.B.Nayak, learned Counsel appears on behalf of the applicant-revenue. Though served none appears on behalf of the respondent-assessee.

3 In view of the fact that question nos. 1,2 and 4 stand concluded by different decisions and question No.3 is declined to be answered for the reasons that follow,

it is not necessary to set out the facts in detail.

4 The question No.1 falls in two parts. The first part pertaining to medical benefit which is decided against the assessee by a decision of this Court in case of C.I.T. vs. Ambica Mills Ltd., 236 I.T.R.921. For the reasons stated in the said judgment, we hold that the medical benefits paid to Managing Director have to be taken into consideration for the purpose of working out the monetary limits while considering the disallowance under section 40(c) of the Act. In so far as second portion regarding House Rent Allowance is concerned, the same is not liable to be taken into consideration in light of the ratio of the Supreme Court decision rendered in the case of C.I.T. vs. Mafatlal Gangabhai & Co.(P) Ltd., 219 I.T.R.644.

5 Similarly in relation to the second question cash payment of house rent allowance and special duty allowance to the officers of the company have not to be taken into consideration for the purpose of disallowance under section 40A(5) of the Act as stated by the Apex Court - "cash payment by an assessee to his/its employees do not fall within the ambit of section 40(a)(v) or section 40A(5)(a)(ii) of the Act."

6 In so far as question no.4 is concerned, this Court in a decision rendered on 6/2/2001 in I.T.R.No.54 of 1988 in the case of C.I.T. vs. Nutan Mills Ltd., has held that all the tours undertaken by an employee during the year are not to be grouped together and that the limits laid down in Rule 6-D of the Income Tax Rules,1962 have to be applied with reference to each trip of an individual employee.

7 In so far as question No.3 is concerned, the Tribunal has followed its decision in the case of Ahmedabad New Cotton Mills Co.Ltd. and at the time of hearing we are informed that the applicant is not in a position to ascertain as to whether the said decision of the Tribunal has been carried further or accepted by the revenue. Moreover, the amount involved is Rs.4,750/only. Hence, we decline to answer the said question.

8 All the three questions being question Nos. 1, 2 & 4 are answered accordingly as stated hereinbefore while question No.3 is left unanswered.

9 The reference stands disposed of accordingly. There shall be no order as to costs.

Sd/- Sd/-
(B.C.Patel, J) (D.A.Mehta,J)

m.m.bhatt